

Module 1: What is social justice Advocacy?

Paula O'Brien,
'Changing Public Interest Law: Overcoming the Law's Barriers to Social Change Lawyering' (2011) 36(2) Alternative Law Journal 82.

- Public interest law includes those who assist disadvantaged individuals or groups to access the legal system in order to solve an immediate legal problem or secure a benefit for a wider group of similarly placed people
- Social change lawyering: addressing the causes of entrenched legal problems,
- Australian lawyers mention systemic change/issues but the reality is that public interest lawyering involves delivery of legal service to solve particular legal problems of the client and they are most often intent on changes to the laws, institutions or legal processes most immediately connected to the legal problems.
- Large unmet need for legal services and bad funding for community legal centres
- Liberal mode of thinking about law: main role of law is to constrain governmental power to enable individuals to exercise their autonomy: in this system all individuals are equal under the law- judiciary seen as central to upholding individual rights and lawyers views on the legitimacy of the clients' interests irrelevant to rendering of legal services- they have political immunity in the sense of having no personal accountability
- Access to justice rests on liberal principle of rule of law and its notion of formal equality before the law
- Rule of law suggests that if you make it to court then justice will be delivered but this is not always the case. Need more public interest lawyers to see that substantive as opposed to formal equality might need to be achieved other than through the legal system and courts
- Lawyers only concerned with solving their immediate legal problem- success when they get the outcome that relieves their immediate problem, might need to get the court to declare a new legal entitlement when the law does not clearly recognise one. Liberal view constructs public interest law to doing same tasks as normal lawyer – this does not easily accommodate the work of those pursuing systemic change and using strategies other than direct casework service.
- One consequence of social change approach is that some clients/groups of clients may be refused legal assistance where working on their matters does not serve goal of tackling causes of a legal issue
- Litigation not the only strategy- used if fits within social change goal- such as drawing attention to the issue- but too often litigation is seen as the end of the lawyers engagement
- Social change lawyers may also need to lobby governments, write submissions to government- but potential backlash from clashes with ethical rules on media usage and being seen as doing "too political" tasks when lawyers should be neutral and not affect this divide
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John Calmore, **'A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty'** (1999) 67 Fordham Law Review 1927

- Cause lawyering encompasses various law related activities such as rights assertion to legal counselling, and relies on law related means to achieve social justice for individuals of subordinated or disadvantaged groups
- Poverty and space become racialized to the detriment of these poor- interaction between race, space and poverty
- Those in poor areas don't just have to deal with their own poverty but also that of those around them as the social milieu is different from that of the rest of society
- Cause lawyering in context: legal profession both needs and is threatened by cause lawyering because it needs lawyers who commit themselves to furthering a "good society" and moral activism puts a good name on the profession but it also threatens dominant legal practice in the sense of challenging neutrality and technical competence.
- Cause lawyers must threaten dominant understanding
- Progressive lawyering- driven by conviction and commitment to oppose forces of domination – they push their professional role and organisation into areas that are politically/professionally risky and controversial
- Regnant lawyers: maintain disassociated power over clients – traditional lawyer/client paradigm- this is how lawyers are currently socialised because they formally represent civets, choose between service work and impact work, litigate- these forces are cultivated under the pressing circumstances of practice- social and cultural distance between them and clients, crush of client demand, burn out of practice, differing worldviews of lawyers and clients, occasional mistrust or disrespect and lawyers self-righteous arrogance.
- Rebellious lawyers: nurture sensibilities and skills compatible with collective fight for social change- they connect with the community they serve and make advocacy a key premise.
- Community based lawyering: needed because the poverty is primarily situated at intersection of race, space and poverty- need to see the clients issues as systemic contradictions rather than

	<p>their own personal problems. Need to focus on helping them break out of the cycle.</p> <ul style="list-style-type: none"> • Barriers faced by clients are not occasional or accidental but are all related in such a way as to catch one between them and restrict them in any direction= cage-like structure- those inner city poor are oppressed by the normal ongoing processes of everyday life. • Individual clients cannot be treated as separate from their racial, geographic and class identities- race and class affect policies- notes that if poverty was as widespread for white people there would be an outcry. • Marginalisation= a whole category of people is expelled from useful participation in social life and thus subjected to severe material deprivation and extermination • Marginal are the people the system of labour cannot use or will not use: process whereby some combination of factors such as technological change, racial competition or govt action pushes groups to edge of labour force leaving them unwanted, redundant or confined to the worst jobs. • Location important because it determines the school you go to, crime you're exposed to and peer influences on children • Need shared recognition that these locations are the way they are because of asymmetrical relations of power • "thirdspace"- way of thinking that responds to the binaries: creative way around it- not rejecting binary choices, need a bottom up perspective to advocacy • Remedial focus from right wing is changing their behaviour and values rather than changing their inequality – policy should focus on alleviating poverty and joblessness instead of changing the cultural traits of the ghetto underclass. • In advocacy you need to be informed by the actual conditions of these people- need radically progressive response which is site specific in responding to the needs and aspirations of the inner city poor. • Need to escape the debilitating and reactionary features of regnant lawyering and adopt a progressively activist yet patiently open collaboration with the client community
<p>Extract from Martha Mahoney, John Calmore and Stephanie Wildman, Cases and Materials on Social Justice: Professionals, Communities, and Law File</p>	<ul style="list-style-type: none"> • No single definition of social justice- usually used as counterpoint to injustice or refer to substantive as opposed to formal equality- embraces both fairness and equality- primary focus on well-being/quality of life but goes beyond patterns of distribution to incorporate attributes relevant to how these patters come about • Social justice means elimination of institutionalised domination and oppression • Distributive paradigm: defines social justice as the proper distribution of social benefits and burdens among society's members- primarily in terms of wealth, income and other material resources- but Iris Young notes that this is a limited way of thinking about it as it ignores social structure and institutional context that helps determine distributive patterns. – context should include all aspects of institutional rules and relations such that they are subject to collective decision—more important is concepts of domination and oppression rather than distribution • The role of law in this is that the ability to bargain for supervisory positions or become entrepreneurs means they can gain higher wages rather than gain less freedom as consumers – assignment of property rights has an effect on ameliorating or contributing to this as those with money have the power to bargain etc • Vertical justice (judge at the top/police model etc)- adversarial where there is always a winner and loser- product of adjudication is punishment or liability- vertical justice method is pyramid of power with the weak and powerless at the bottom and strong/powerful at the top • Navajo system based on discussion, consensus, relative need and healing-restorative justice which puts people in good relations with each other • Dismantling one form of subordination is impossible without dismantling every other.
<p>Menkel-Meadow, C., 1985. Portia in a different voice: Speculations about women's lawyering process. Berkeley Women's LJ, 1, 39-63. File ***note the early year</p>	<ul style="list-style-type: none"> • Values, consciousness, attributes and behaviour are gendered= some identified as belonging to women and others to men- attributing these characteristics to a gender is problematic because as we observe the generalisations to be valid we risk perpetuating the conventional stereotypes that prevent us from seeing the qualities without their gendered content • Common theme in academic articles that women experience themselves through connections and relationships to others while men see themselves as separately identified individuals • Given women were long excluded from law it is unsurprising that the traits associated with women are not greatly valued by the law-maleness of law also used as a justification for excluding women from practicing law- come to see the white middle aged maleness as necessary for lawyering • Refers to Heinz dilemma study and how different gendered children reacted to it in different ways: boy balances the rights and reaches a decision after spotting legal issues and excuse and justification while the female holds the needs of the parties and their relationships constant and

	<p>hopes to satisfy them all as in negotiation rather than selecting a winner- she sees things differently to him rather than “better”</p> <ul style="list-style-type: none"> • Women try to change the rules to preserve relationships while men in abiding by the rules depict relationships as easily replaced and see danger in too much connections and intimacy, women see danger in the loss of connections and not having an identity through caring for others/being isolated/abandoned • Because men have dominated the legal system- women’s voice may be present but in a male form • Women’s strength is approved of with proviso that it is to be exerted in appropriately female spheres- ok as mother but not in courtroom • Female lawyers discussed the impact of personal lives on professional lives and vice versa but no such reports in ethnographies of male lawyers • Suggests that perception of more than one right answer as a female perspective may affect the legal system with female judges • Suggestion that women’s voice of care and connection might lead to doctrinal changes in areas of state action and conception of responsibility might supplement or replace notion of individualistic constitutional rights • Article based off not yet knowing what the effect of women moving into the legal system as lawyers will be (dated 1985)
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<p>Bartlett, F. and Aitken, L., 2009. Competence in caring in legal practice</p>	<ul style="list-style-type: none"> • Female lawyers over 3 times less likely than males to find themselves subject to complaint- takes into account difference in amount of male vs female lawyers- similar result across other countries such as US, Canada and Netherlands • Results of their study indicated that women are leaving the law earlier than men and are more likely to occupy less senior roles than male peers so may feel disempowered • Interviewees suggested that a superior capacity to recognise and respond to emotion possessed a direct correlation to fewer formal complaints • Suggests not that women have a different practice but may favour different way of practicing • Females place more importance on listening to clients concerns and more likely to give legitimacy to clients emotional concerns • Client preconceptions or prejudices often apparent to them, eg: want female counsel for domestic violence or may want a man to have someone more aggressive stand up to husband • Women often forced to assert position so as not to be taken for the social worker • Feel the need to make sure you know everything/have perfect brief due to fear of humiliation- pressure to prove themselves which may lead to working harder on tasks than they thought was necessarily needed for the task at hand • Pressure to present professional persona based on preconceived notion of the benchmark male • Increasing recognition that clients value the process of accessing the law rather than just the outcome- i.e.: complain about lack of communication etc • No apparent breach of ethical rules from ethic of care approach but can easily be as indicated by <i>Legal Services Commission v Shelly Lynn Johnson</i>: picking up belongings of client and called the husband ugly: amounted to unsatisfactory professional conduct • Several women influenced in their professional decisions by their family/other aspects of their lives – childcare responsibilities etc regarded in negative terms and women still designates women as uncommitted and viewed with suspicion. • Practices which do not attract higher fees or which balance professional and nonprofessional concerns are unlikely to be favoured- many cases will be viewed as private choice which receive little or no remuneration • Does not assume all women are like this but rather that some women adopt this ethic of care approach- this is a valid approach and the value attributed to this approach should be re-evaluated.
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Module 2: Social Justice Lawyer’s Toolbox

<p>Comments on module 2</p>	<p>While the media can be used as a tool it is important that the lawyer does not speak on behalf of the client without their express consent to the words (plan it out etc) so as not to disempower them, unless it is an emergency, and the media must be used in conjunction with other forces so as not to contradict ethical duties in accordance with the solicitors rules etc and to appear not to be neutral/affect their reputation and thus the client’s case.</p>
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<p>, ‘Public Interest Litigation: Making the case in Australia’</p>	<p>This article discusses the public interest litigation (such as Tasmanian dams case), noting that there is barely any research in Australia- only other countries and that it is hard to apply the same logic in Australia because of the following nationally-specific features:</p>
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